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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Seventeenth session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 25 November 1997, at 3 p.m.

Chairperson: Mr. GRISSA

later: Mr. ALSTON

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Azerbaijan (E/1990/5/Add.30; HRI/Corr.1/Add.41/Rev.2; E/C.12/Q/AZE/1)

1. At the invitation of the Chairperson, the Azerbaijan delegation took its place at the Committee table.

2. Mr. GADJIEV (Azerbaijan), after briefly recalling the history of his country, stated that Azerbaijan had undertaken a series of democratic reforms designed to establish a State subject to the rule of law and in which all the rights of the individual and the citizen were guaranteed. One important step forward in this process, in addition to the election of the first independent Parliament, had been the adoption on 12 November 1995 of a Constitution, article 7 of which formally established the rule of law and the separation of powers.

3. In the judicial field Azerbaijan respected principles such as the presumption of innocence, the impossibility of being tried twice for the same offence and the right of appeal. It was planned to introduce a new judicial system, including in particular a Court of Cassation, a Court of Appeal, a Constitutional Court and a Supreme Court; all those bodies would be independent and required to comply with the law. Victims of excessive use of power could seek damages. Unfortunately, the reforms of the judiciary were encountering not only difficulties of a material and technical character but also a refusal by certain highly placed officials to relinquish the plenary powers they enjoyed under the former regime.

4. In the social field, and in particular in that of employment, a number of legislative instruments in line with European standards had been drafted. The right to work was guaranteed through the provision of free vocational training and the establishment of a vocational guidance system. In September 1997 there were 37,000 individuals in the country receiving unemployment benefit. There had been a spectacular increase in the number of small- and medium-sized enterprises in the services and light industry sectors, both of which offered employment opportunities in large numbers. In order to encourage job creation the State had reduced the tax burdens of those enterprises.

5. The privatization programme had affected over 10,000 enterprises (70 per cent of all enterprises). In agriculture, over 21,000 individual farms had been created, and stock-rearing was now mainly in the hands of the private sector. Although difficulties (relating to financing, credit and the restructuring of kolkhozes and sovkhozes) still remained, the number of enterprises with foreign capital participation had risen to 1,400.

6. The Constitution guaranteed the right to social security with benefit payments in the event of sickness, invalidity, unemployment, etc. The Labour

Code sought to prevent arbitrary dismissals, and the right to organize in trade unions had become a reality. There were no restrictions on marriage, and the partners in a marriage were equal before the law. The protection of mothers and children was guaranteed, and family allowances were paid in respect of children up to age 16. Medical care was guaranteed for everyone without discrimination, notwithstanding shortcomings in the health situation on account of the lack of qualified professionals, medicines and equipment.

7. The right to housing was guaranteed to the greatest extent possible, and in 1993 a law was adopted allowing all persons to acquire ownership of their dwellings and to dispose of them as they thought fit. Education was free and compulsory up to the end of the secondary cycle; technical and university education was also free.

8. In the cultural field, the State was pursuing a policy of protection of minority cultures. The Constitution, reflecting the multi-ethnic and multi-denominational character of the country, guaranteed to all persons the right to defend their ethnic identity, their mother tongue and their religion. Generally speaking, legislative measures were being taken to ensure the implementation of all the rights proclaimed in the Covenant.

9. As a result of the economic difficulties being experienced by the countries in transition, over half the population was living below the poverty line. However, the results of the economic reforms and the social measures taken by the Government would permit an improvement in the situation. It had to be remembered that Azerbaijan had only recently rejected totalitarianism and was currently in a transitional phase; that situation inevitably gave rise to disorganization within governmental structures, political clashes and social tensions. The very concept of democracy was still imperfectly understood by the population. As a result, the country had come to the brink of civil war and was in the throes of a severe political crisis, which was reflected in the separatist movements in the Nagorno-Karabakh region and the armed conflict with Armenia.

10. As a result of the military operations launched by Armenia, over 18,000 persons had been killed and 50,000 wounded, and a substantial proportion of the country's cultural heritage had been destroyed. An additional result of the conflict was that 7.5 million persons had become refugees or displaced persons, while some regions had been subjected to total ethnic cleansing. The situation had created a dilemma for Azerbaijan; it could either adopt a militarist policy, the effects of which would have been deleterious to civil rights and fundamental freedoms, or persevere in the construction of a democratic society. The President of the Republic had chosen the latter course.

11. Azerbaijan considered that the only way to end the conflict was through political negotiation; that position was reflected in United Nations Security Council resolutions 822, 853, 874 and 884. To that end the principles set forth at the Lisbon summit - namely the territorial integrity of Azerbaijan, the autonomy of Nagorno-Karabakh and the security of the population - must be respected.

12. Azerbaijan was proceeding with the reform of its political and judicial systems in cooperation with the international organizations (and in particular the Council of Europe), drawing on the historical experience of the European peoples which had succeeded in creating States based on democracy. The difficulty of Azerbaijan's position was due to the fact that it was at the meeting-point of Eastern and Western cultures.

13. In conclusion, Mr. Gadjiev stated that the report he had just submitted had been prepared by a commission the membership of which included NGOs.

14. Mr. ANTANOVITCH congratulated the Azerbaijan delegation on the quality of its presentation, particularly as he knew from experience how difficult it was for CIS countries to present reports. He was, however, surprised at the results obtained under the privatization programme. The number of enterprises privatized was very high compared with achievements in, for example, Ukraine and Belarus. In those two countries, not only had privatization been slow, but it had also been marked by fears of job losses among the workers and concern among investors at the risks involved. He asked how the Government of Azerbaijan had succeeded in arousing such interest, particularly among Western investors. He also asked how the Government had dealt with the problems of unemployment arising from privatization; whether the modest figures reported did not mask hidden unemployment; and from which countries the foreign investors had come.

15. Mr. CEVILLE asked for details concerning the relationship between the Covenant and Azerbaijani legislation. The report stated that national institutions were required to bring domestic legislation into line with the provisions of the Covenant. He asked how that was achieved in practice.

16. Mr. THAPALIA stated that the Committee had noted with satisfaction that Azerbaijan had begun to integrate the provisions of international instruments, and in particular the Covenant, into its national legislation. This led him to ask whether the provisions of the Covenant could be invoked in the courts. He also asked for information on the position of Azerbaijan on the subject of the drafting of an optional protocol to the Covenant, as had been recommended by all the human rights conferences.

17. Mr. WIMER congratulated the Azerbaijani delegation on the quality of its presentation. However, like Mr. Ceville, he regretted the lack of precision in the data, particularly with regard to the linguistic composition of the country. For example, paragraph 7 of the core document (HRI/CORE/1/Add.41/Rev.2) contained the following passage: "In the census, 291,000 non-Azerbaijanis, or 23.9 per cent, named Azerbaijani as their native language or as a second language which they spoke fluently and 2,302,900 non-Russians, or 34.8 per cent, named Russian". The wording was unclear, and he requested the delegation to provide explanations.

18. Mr. SADI asked whether the extremely rapid transition from a centralized to a market economy had brought in its wake consequences such as dislocations in the structure of industry, corruption and the impoverishment of the population and whether the measures taken to attract foreign investment were

beneficial to the interests of the country. He asked because, according to some information received, 60 per cent of the population was living below the poverty line.

19. It would also be interesting to know whether the judicial power was independent from the executive power; whether the establishment of a constitutional court was envisaged; and the manner in which the information media were used to inform the competent authorities and the public of the rights proclaimed in the Covenant.

20. Mr. PILLAY noted with satisfaction that foreign nationals and stateless persons resident in the country enjoyed the same rights and freedoms as citizens. He asked whether information to the effect that the judiciary was under the control of a corrupt and inefficient executive authority was correct.

21. Mr. KOUZNETSOV asked why Azerbaijan had not yet ratified either the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention on the Elimination of All Forms of Discrimination against Women. According to the report, all discrimination based on sex was prohibited by law. According to a number of credible sources, that prohibition was not always effective in practice owing to deeply rooted social traditions.

22. Mr. TEXIER asked for information on the situation of refugees with regard to the rights set forth in the Covenant. Some NGOs had referred to favouritism and lack of transparency in the context of privatizations. The Azerbaijani delegation might wish to describe the manner in which privatizations were effected.

23. Mr. CEAUSU asked what remedies were available to individuals who considered that their rights had been violated (in particular by administrative authorities); whether the provisions of the Covenant could be invoked in courts of law; and whether the text of the Covenant had been published in the Official Gazette or any other publication destined for the competent authorities.

24. Mr. AHMED congratulated Azerbaijan on the progress it had made in the field of human rights in such a short time, notwithstanding very difficult circumstances. He asked what problems the Government was meeting with in giving full practical effect to the provisions of the Covenant and in establishing a State genuinely subject to the rule of law.

25. Mr. ADEKUOYE asked what recent legislative instruments had taken into account the provisions of the Covenant; whether the Covenant had been translated into the different languages spoken in Azerbaijan; whether it was true that the Government tended to neglect the development of small- and medium-sized enterprises; and in what way the State collected taxes and duties from private-sector enterprises.

26. Mrs. JIMENEZ BUTRAGUEÑO asked for further information on the measures taken to guarantee equality between men and women, on the organization of the judiciary and on the measures taken to combat corruption.

27. Mr. RATTRAY asked for information on the proportion of senior posts in the private sector, the public service and the judiciary occupied by women. He also asked whether the courts had already handed down decisions relating to the rights set forth in the Covenant, particularly regarding women.

28. Mr. MARCHAN ROMERO asked to what extent non-governmental organizations had been associated with the preparation of the Azerbaijani report.

29. Mr. GADJIEV (Azerbaijan) stated that the Government had planned to privatize 70 per cent of State enterprises and recognized that the conversion to a market economy gave rise to many problems. For example, it was true that hidden unemployment was substantial.

30. In the field of legislation much still remained to be done to bring domestic law into line with the provisions of the Covenant. The Government was actively pursuing that goal. The courts could already invoke the provisions of the Covenant, which, in accordance with article 151 of the Constitution, took precedence over the legislative provisions in force in the event of a contradiction between the two. The judicial system, like the economy, was in a transitional phase and the reform could not be completed until the codes of civil and penal procedure had been amended. Citizens could already apply to courts of first instance when they considered that their rights had been violated. Military courts could only take cognizance of offences committed by members of the armed forces.

31. There were plans to train judges specializing in economic matters and to establish appeal courts, a court of cassation and a constitutional court which would be responsible for ensuring that the different elements of legal proceeding complied with constitutional rules.

32. Turning to the subject of languages, Mr. Gadjiev said that the national language of Azerbaijan was Azeri and that measures had been taken to promote its use. However, Russian was also in widespread use. That situation was to be welcomed, since Russian was the linguistic vehicle for a culture of immense riches and a great tradition. Nobody was forced to speak Azeri or any other language. In Azerbaijani institutions either language could be used. If a defendant appearing before a court preferred to use Russian, the documents in the case would be drawn up in Russian and the judge hearing the case would use that language. There was thus no discrimination based on language.

33. Corruption was widespread in the economic structures, particularly in the context of privatization. That scourge could not be combated solely by repressive measures. If there was a genuine desire to eradicate it, measures of an economic nature had to be taken. Appointees to senior posts should be selected on the basis not only of their competence but also of their honesty.

34. As regards the procedure for the nomination of judges, they were nominated by the State President on the recommendation of the Council of the Magistracy. The latter comprised representatives of both the legislature and the executive, and in particular included judges with substantial professional experience whose views on the subjects carried authority. Nominations for judgeships in the Supreme Court and the Constitutional Court were made by the President; the nominees were confirmed in office by the legislature. That

procedure was questioned in certain quarters; but what mattered was that once appointed a judge must be totally independent. When a State could not ensure the independence of its judicial machinery the situation became complicated; that often occurred in the former States of the ex-USSR.

35. On the subject of discrimination against women, it was important to remember that one of Azerbaijan's main achievements was the establishment of equality between men and women. Admittedly, women were not over-represented; but they were just as numerous in the different institutions as their sisters in the most advanced countries. The Minister of Justice, and nine of the Supreme Court judges, were women. There were several women in parliament, and the country had even appointed two women ambassadors, one of whom was in Geneva.

36. There were currently large numbers of refugees and displaced persons - over 2 million in all - in Azerbaijan. The Government was taking measures to provide schooling for children, medical care and humanitarian aid in the form of foodstuffs, clothing and medicines. The best solution to the refugee problem would be the unconditional liberation of all the occupied territories which had no connection with Nagorny-Karabakh. Together with that liberation, the removal of explosive mines would have to be undertaken. If the United Nations were to enter into negotiations on the subject, Azerbaijan would be prepared to determine the status of the populations concerned within the Minsk group, together with the guarantees required for its security. He hoped that the negotiations with Armenia which were currently proceeding together with representatives of France and the United States would have a successful outcome.

37. As regards the Public Prosecutor's Department, the Procurator-General unfortunately had extremely wide powers, and reforms were essential. In the same context, new legislation was needed to regulate the activities of the police force; to ensure the proper functioning of the State, the tasks of the law enforcement agencies must be clearly defined.

38. As regards human rights instruments generally and the International Covenant on Economic, Social and Cultural Rights in particular, a number of Azeri language publications on the subject existed in Azerbaijan which ensured that the instruments in question received the necessary publicity. There were also organizations seeking to uphold the rule of law which published the texts of international instruments relating to the defence of rights and freedoms, such as the Universal Declaration of Human Rights. Lastly, NGOs had been invited to take part in the preparation of the report, and some of their comments had been accepted.

39. Mr. KOUZNETSOV stated that he had not received a reply to his question, namely whether Azerbaijan had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women and, if not, for what reasons.

40. Mr. ADEKUOYE asked whether, as paragraph 22 of the report seemed to imply, it was true that foreign nationals and stateless persons could not become proprietors of their dwellings.

41. Mr. GADJIEV (Azerbaijan), in answer to Mr. Kouznetsov, stated that, contrary to what was stated in the country analysis, Azerbaijan had acceded to the Convention on the Elimination of All Forms of Discrimination against Women on 30 June 1995 and had submitted to the Committee responsible for the implementation of that Convention a report which would be considered in 1998. Azerbaijan had also acceded, on 31 May 1996, to the International Convention on the Elimination of All Forms of Racial Discrimination.

42. It was true that foreign nationals and stateless persons living permanently in the Azerbaijani Republic had the right to a dwelling but could not acquire ownership of it.

Articles 6 and 7

43. Mr. ANTANOVICH raised the question of the development of Azerbaijan's wealth, and particularly the exploitation of petroleum resources, and, as a corollary, that of the possible social repercussions ensuing therefrom. He asked whether there was not a danger that the introduction of out-and-out specialization of labour in a single sector - the petroleum sector - might be detrimental to other sectors. According to one report, a kind of underclass was already emerging. He thought that that situation might constitute a threat to the social and economic independence of the country.

44. Mr. RIEDEL asked what the Government was doing to combat unemployment, the figures for which, given in paragraphs 35 and 48 of the report, were disquieting. In addition, he feared that the statement in paragraph 36 to the effect that "[the predominance ... of] material production in which mostly men are employed means that more labour resources can be diverted to the non-production sector in which mainly women are employed" might be interpreted as evidence of discrimination against women in Azerbaijan. He went on to ask whether there was not a contradiction between the high level of unemployment mentioned elsewhere in the report and the statement in paragraph 37 that "for that reason the process of attracting women into social production must not run counter to the interests of reproducing the population, to the interests of motherhood". Finally, he asked whether the representative of Azerbaijan, in his capacity as President of the Supreme Court, intended to implement the International Covenant on Economic, Social and Cultural Rights within his sphere of jurisdiction and what place was given to the Covenant, as an instrument of international law, vis-à-vis the Azerbaijan Constitution.

45. Mr. TEXIER shared Mr. Riedel's concern regarding the statements in paragraphs 36 and 37 of the report. In addition, bearing in mind the figures and rates given in paragraphs 42, 44 and 48 - which appeared inconsistent in certain respects - he asked whether the trend in unemployment was upward or downward. He also asked what steps were being taken by the Government to combat unemployment; what was the role of the State Employment Service, to which there was little reference in the report; and what was being done to ensure equality of access to employment for men and women. Finally, he asked if there was in Azerbaijan a minimum wage as defined by article 7 - in other words, a wage which would ensure a decent living for workers and their families; if so, what proportion of the population enjoyed that minimum; and

if there were individuals who received less than the minimum wage. Mr. Texier wanted more than figures; he wanted a detailed description of concrete realities in Azerbaijan.

46. Mr. SADI observed that the Azerbaijani economy derived its resources from the exploitation of petroleum resources and that the country had concluded a 33-year agreement with a consortium of foreign oil companies, which, as was well known, generally paying little attention to the environment, trade union activities and equity in remuneration. He would appreciate detailed information on the measures taken by the authorities to protect the environment, working conditions and workers' rights with regard to remuneration.

47. Mr. KOUZNETSOV welcomed the inclusion of article 38, concerning the right to work, in the Constitution. However, he would appreciate more detailed information on the employment market situation during the last two or three years; he specifically referred to the rate of unemployment and the existence of unregistered unemployed persons. He also asked for forecasts for the next few years.

48. Mr. ADEKUOYE asked what was meant by the term "non-productive labour" and whether it referred to domestic tasks performed by women. He also asked for information on the measures taken by the public authorities to help disabled persons to find jobs and the percentages of national production destined for countries forming part of the ex-USSR and for countries which were not members of the CIS. In addition, in view of the disparity observed between the amount of the minimum wage in the public sector and the amount necessary to enjoy a decent living, he asked how the persons concerned managed to supplement their incomes (moonlighting, etc.).

49. Mr. WIMER, referring to a statement in the report that a certain number of posts and activities were reserved exclusively for Azerbaijani nationals, asked to be informed on the specific branches of activity in which foreign nationals and stateless persons could not be employed.

50. Mr. AHMED asked for information on the numbers of refugees from the Nagorno-Karabakh region and the numbers of farmers who had migrated to the towns in search of work (following the privatization of State farms) and the percentage of such persons who actually did find work. He also asked what measures had been taken by the authorities to restrict the inflow of foreign workers in the petroleum and services sectors, which were in a state of rapid expansion. He asked specifically whether quotas existed.

51. Mr. CEAUSU asked for further information on the current state of the economy in Azerbaijan. He asked for information on the extent to which the reforms contemplated, and in particular the privatizations, had been implemented and on the share of each branch of activity in the creation of gross domestic product. He also asked for information on the annual amount of resources available to the National Employment Promotion Fund and on the uses made of those resources; more specifically, he asked who the beneficiaries were. In conclusion, he asked why Azerbaijan had still not acceded to the ILO

Labour Inspection Convention and for more detailed information on the functioning of the labour inspection system (frequency of inspections, powers of inspectors, etc.).

52. Mr. GADJIEV (Azerbaijan) stated that his country had begun to exploit its petroleum resources midway through the previous century and that since that time the industry had developed continually. However, that could not be taken as implying that the Azerbaijani economy was based solely on the exploitation of petroleum resources. As a result of the reforms introduced in recent years, substantial progress had been made, particularly in agriculture, which was a relatively developed sector (production of wine and tobacco, stock-rearing, etc.). The land belonged mainly to private owners, who exploited their property. It had to be admitted that certain problems still existed, relating, among other things, to hostilities and the occupation of land; nevertheless, Azerbaijan had become self-supporting in food production. Food-processing industries also existed; but since foreign companies were endeavouring to monopolize that sector, the State was being compelled to take stricter measures in order to maintain some control. There were also local industries and other industries, such as metal working, which were not focused exclusively on the petroleum sector. He shared the concerns expressed by certain members of the Committee concerning the exploitation of petroleum resources by foreign companies which paid little attention to respect for the social and economic rights of workers and stated that the Azerbaijani authorities must ensure that that wealth contributed primarily to improving the levels of living of the local population. Mr. Gadjiev went on to say that, notwithstanding the difficulties encountered in the context of the transition process, a revival of the branches of activity which had previously known significant development in Azerbaijan was essential. As regards the environment, he pointed out that all the petroleum exploitation agreements concluded between Azerbaijan and foreign companies required the latter to comply with Azerbaijani legislation and current international standards concerning protection of the environment.

RELATIONS WITH OTHER UNITED NATIONS ORGANS AND TREATY BODIES (agenda item 5)

Statement by the United Nations High Commissioner for Human Rights

53. The CHAIRPERSON, speaking on behalf of the members of the Committee, welcomed Mrs. Robinson, High Commissioner for Human Rights, and invited her to take the floor.

54. Mrs. ROBINSON (United Nations High Commissioner for Human Rights) stated that when discussing human rights it was extremely important to keep a balance between civil and political rights on the one hand and economic, social and cultural rights and the right to development on the other. She welcomed the fact that the theme for the Committee's day of general discussion would be the right to food, particularly as the Office of the High Commissioner for Human Rights had received a specific mandate in that field from the Rome Summit. She was aware that the Committee had a plan of action to strengthen its work and hoped that it would obtain the support of an increasing number of governments. As regards the draft text of the optional protocol, she expressed her determination to strengthen the machinery for the protection of human rights and the treaty bodies and hoped that countries would enter into

firm commitments in 1998. She also expressed the hope that the review of the Vienna Declaration and Programme of Action would be conducted rigorously and that cooperation with the Committee would permit highlighting of the importance of the results obtained hitherto.

55. The CHAIRPERSON stated that the Committee was convinced of the commitment of the High Commissioner for Human Rights to promote economic, social and cultural rights. In that connection he announced that he had received contributions of 500,000 francs from the French Government, 50,000 dollars from the Netherlands Government and 3,000 dollars from the Government of Cyprus. In that connection the Committee hoped that it would receive specialist assistance from the Office of the High Commissioner for Human Rights.

The meeting rose at 6.05 p.m.